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THE PEOPLE OF ISRAEL VS. JESUS OF NAZARETH

By F. L. Grant of the Denver Bar

(A reply to the Article in the August Dicta)

I WAS in the act of reading "The Trial of Jesus," written by a non-Christian, a learned East Indian, Dr. Srinivassa Aiyar, when the August copy of Dicta was laid on my desk, and in which appeared an account of the trial of Jesus by Robert L. Stearns. Like my younger brother in the law I also am too modest to attempt to discuss this trial along theological lines nor in fact will I attempt to discuss it learnedly along legal lines, and what I now have to say is merely repeating as nearly as possible so as to give continuity to the article, "The Trial of Jesus," as I was reading it, because Dr. Aiyar takes just the contrary view from that set forth by brother Stearns, namely that the trial of Jesus was conducted legally and that he was legally convicted and sentenced.

In brother Stearns' article I was inclined to think he merged the two trials, or rather gave me the belief that the trial before Pontius Pilate for treason against the Roman law was merely a continuation of the trial of Jesus before the Jewish Sanhedrin.

Dr. Aiyar takes the position that they are separate and distinct; that the first trial before the Sanhedrin brought under the Jewish law for blasphemy when Jesus said "I will destroy this temple that is made with hands and within three days will build another made without hands," and also that of pretending to be the son of God, failed through the action of Pontius Pilate who completely disposed of that charge when he returned a final judgment, "I find no fault in this man at all." The other trial, not upon blasphemy heard under the Jewish law, was for treason to the State of Rome, based upon an entirely different charge and brought under the Roman law because of the specific charge made against Jesus as found in a single verse of St. Luke. (St. Luke 23-2.)

"We found this fellow perverting the nation and forbidding to give tribute to Caesar, saying that he himself is Christ, a king."

In view of the foregoing let us now take up Dr. Aiyar's article, in which he says:

"It must be borne in mind at all times that these two trials of Jesus were separate and independent so far as the charges, judges, and jurisdiction were concerned, and that the only common elements were the persons of the accusers and the accused.

Under the law as then existing, as applied to Roman criminal trials, the first step was the filing of an application with the presiding magistrate for permission to bring the alleged criminal charge against a certain person. In case the accused was caught red-handed or if he happened to be within the forum then the accusation was made direct. Like the Jewish law, Roman jurisprudence at this time did not know states' attorneys or public prosecutors as that application is made today. Any private citizen whether one of the accusers or not might take upon himself the public prosecution in behalf of the government. It was, however, the law that but one prosecutor could appear unless there was more than one crime charged. With the accused before the court, he could then be interrogated at length concerning the facts of the crime. This proceeding, generally speaking, was thus in the nature of a modern grand jury inquisition, and concluded the preliminary step.

The penalty imposed under the Roman law for the crime of treason was crucifixion. This form of punishment while unknown to the ancient Hebrews had long been in force in the domain of Caesar, indeed, it may be said for very many years before his time. The ancient Egyptians practiced it. So did the Carthaginians, Persians, Germans, Assyrians, and Greeks, as well as the Romans themselves. History records the fact that the Romans employed this form of punishment on a gigantic scale, the Roman General Varlus having crucified two thousand Jews in one day at the gates of Jerusalem. At the close of the war with Spartacus, the gladiator, ten thousand slaves were crucified. This was meted out to such as were guilty of robbery, piracy, perjury, sedition, assassination and treason."

The indictment which was brought against Jesus is contained in a single verse in St. Luke, "And they began to accuse him, saying, 'We found this fellow perverting the nation, and forbidding to give tribute to Caesar, saying that he him-

self is Christ, the King.'” Pilate took cognizance of this accusation: there could be no mistake as to the nature of the charge, or the meaning of the language. It was clearly high treason against Caesar. No greater crime was known to Roman law.

In defining treason Ulpian says: “*Majestatis crimen illud est quod adversus populum Romanum vel adversus securitatem ejus committitur.*” (Digest *xlvi. 4*) Practically the same definition is admirably given by Cicero, and will be found in *De Inventione ii 17*. A fair translation of the above would read, “Treason is an insult to the dignity and an attack upon the sovereignty.”

It should be borne in mind that at this time Tiberius Caesar was Emperor of Rome; he was a morbid tyrant, fretful and suspicious. He had no love for pernicious activity, or political disturbance. While it is true that Christianity was not on trial before Pilate, it must be remembered that the Creator of Christianity was, and the same legal principles were extant and applicable in A. D. 30 that years afterward brought the followers of Nazarene and the Roman State into mortal conflict.

We believe it to be true that the Roman law applicable to the trial of Jesus and which formed the basis of the complaint against him was the *lex Julia Majestatis*, which first became operative 48 B. C. Under this law, a claim of equal standing with the King, or ruler, constituted treason and was subject to the death penalty.

The priestly accusers appear before the Roman judge. They had been turned down so far as their first wishes were concerned and the action of the Great Sanhedrin in condemning Jesus had not been confirmed; order was had in court and Pilate from the *bema* asked:

“What accusation bring ye against this man?”

The words ring with Roman authority and administrative capacity. Then the chief priests and scribes made reply:

“If he were not a malefactor, we would not have delivered him up unto thee.”

Meaning that if he were not guilty of offence, they would not have presented him for trial. They meant to convey to the mind of Pilate that while the judgment of the Sanhedrin

had been set aside, yet that Jesus was amenable to the laws of the Roman Empire.

Pilate clearly disgusted with the accusers of Jesus, and with their persistency in insisting upon his punishment, in a tone of contemptuous scorn said:

"Take ye him and judge him according to your law."

Undoubtedly Pilate intended that Jesus should be taken by his accusers and tried for some minor offence, the penalty for which the Jews were already empowered to execute. This seems to be clearly shown to be the understanding of the chief priests and scribes as shown by their reply:

"It is not lawful for us to put any man to death." (John xviii. 31.)

Nothing short of a death penalty would do; the crime they were about to charge him with in the Roman forum was one which knew of no other penalty. When the crime of treason was charged, Pilate in the very nature of things, could not say, "I do not wish to meddle in this matter." A specific charge having been made, he could not but assume cognizance of the case, and then it was that the indictment as presented was urged. It is given in a single verse of St. Luke (Luke xxiii. 2.)

"We found this fellow perverting the nation, and forbidding to give tribute to Caesar, saying that he himself is Christ, a King."

Here was a charge which was in effect a political offense. It was entirely different than the religious accusation from which Jesus had just been freed.

The first charge that he was perverting the nation, while general in its character, and indefinite, was undoubtedly against the Roman law. It was sedition, one of the forms of treason.

The second charge that he had forbidden to give tribute to Caesar was much more serious. This in itself was a form of treason. It was an open defiance of the laws of the Roman Empire. More than that: Coming from the source it did, it was a direct denial of Roman sovereignty in Palestine.

But the greatest of all the charges made, was found in the accusation that the prisoner claimed to be "Christ, a King." This was high treason against Caesar; it was the greatest

offence known to the law of the Romans. As a loyal deputy of the Emperor, Pilate could not ignore the charge.

At the examination which followed, the Roman governor brushed aside the first two charges as not worthy of serious consideration. Pilate must have thought if this fellow pretends to be a king as Simon did before him, if the prisoner says that Judea has a right to have a King of its own other than Caesar, then this is indeed treason.

All the Evangelists beginning with John xviii, 34 give substantially the same account of the interrogation of Jesus within the palace walls by Pilate. Question after question was asked and adroitly answered. Pilate said, "Art thou King of the Jews?" and Jesus evaded the question by inquiring himself, "Sayest thou this thing of thyself, or did others tell it thee of me?" In other words, Jesus wanted to know whether the question was asked from a Roman or a Jewish standpoint. Pilate quickly answered, "Am I a Jew?" and to this Jesus replied, "My Kingdom is not of this world."

He must have meant that there could be no possible rivalry between himself and Caesar, and yet indirectly he had proclaimed himself as Master of a Kingdom. To this Pilate put the question, "Art thou a King then?" and Jesus in effect answered, "you have correctly stated it. I am a King. I was born to be one."

The examination at this point was interrupted by witnesses and prosecutors who urged new accusations, saying "He stirreth up the people, teaching throughout all Jewry, beginning from Galilee to this place." The evidence taken there indicated that Jesus was a Galilean, so Pilate in view of that fact, sent Jesus to be tried by the governor of the province to which he belonged. This was Herod, Tetrarch of Galilee, who at that very moment was in Jerusalem in attendance upon the Passover feasts. Under the escort of an attachment of the Praetorian soldiery, Jesus was led to the palace of the Macabees for further hearing and trial.

None of the technicalities that might be urged in relation to the trial of Jesus before the Great Sanhedrin can apply to this hearing before either Herod or Pilate in Roman jurisdiction. It did not matter under the law whether the hearing was conducted the day before the Sabbath, or whether it was

on a feast day. It was quite immaterial whether the morning sacrifices had been had, or whether any of the many minor objections which are said to constitute "illegality," in the Jewish trial, were noted. Jesus was now on trial charged with an offence distinctly against the Roman law. He was in a Roman court, and if convicted the punishment which would be meted out to him would be under the Roman law.

To Herod Antipas, Tetrarch of Galilee, Jesus was led to be judged. Herod was a typical Oriental prince. He himself was the murderer of John the Baptist, and as compared with him Pilate unquestionably was eminently respectable. Just what transpired during that hearing, history does not record. Herod undoubtedly thought that Jesus had been sent there for a purpose, and while he did not wish to excite the enmity of Caesar, by dismissing the accused, he feared in his soul to find him guilty as charged. His treatment of Jesus indicated that he believed him to be a clever juggler, a magician, a sleight-of-hand operator, possibly a ventriloquist, whose powers of entertainment were very fine. "Then he questioned him with many words, but he answered him nothing." (Luke xxiii. 9.)

Herod found himself in the position which required that he continue and conclude the examination of Jesus. "And the chief priests and scribes stood by and vehemently accused him." (Luke xxxii. 10).

A careful study of all history indicates that Herod enraged that a simple Galilean peasant would not seriously treat his questions, that by his silence he denied his jurisdiction, and considering that he had been mocked, then found that Jesus was guilty and caused him to be arrayed in a gorgeous robe and turned him back to Pilate, the procurator, for sentence.

On his return to Pilate, a demand was made of the Procurator that he cause the death of Jesus in consequence of the finding of Herod. To satisfy himself, Jesus was called within the Temple by Pilate, and asked "Whence art thou?" Undoubtedly the Roman Governor was hoping that he would receive a denial that the accused was a Galilean, which would thereby have rendered the finding of Herod illegal, because of lack of jurisdiction, but Jesus answered nothing. He would

not explain nor justify himself. Seeing which his accusers framed their last menace in these words:

"If thou let this man go, thou art not Caesar's friend; whosoever maketh himself a King, speaketh against Caesar."

A demand was made upon him "Crucify him! Crucify him!" The hundreds surrounding Pilate understood full well the penalty for a charge as serious as that of treason. There was but one answer to the finding of guilty, crucification. Three times Pilate asked of those who were about him, "What evil hath he done?" and in thundering tones his answer came "He has been guilty of proclaiming himself a King; he hath set himself up against Caesar; he is guilty of treason against the Empire of which you are a servant and officer. Order him to be crucified!"

In accordance with the finding and upon the evidence submitted, coupled with the recommendation of Herod, Pilate delivered to his accusers, Jesus to be crucified. The soldiers of the Governor took him into the common hall where he was surrounded by all the soldiery. They stripped him, and in accord with the custom of that age, and that country, they put over his shoulders a scarlet robe; they platted a crown of thorns and put it upon his head; they placed a reed in his right hand as though to mock him; the assembled multitude bowed their knees before him, saying "Hail! King of the Jews!"

Jesus was spat upon, and mocked, after which he was led away and crucified.

We have now considered the elements of law and fact as related to the legality of the Roman trial. The powers and duties of Pilate as procurator of Judea and presiding judge at the trial are of course involved in this consideration. The general principles of Roman provincial administration, the legal and political status of the Jew subject, the exact requirements of criminal procedure in Roman capital cases, and in the provinces throughout that Empire at the date of the crucifixion.

Analyzing the case from the viewpoint of the jurist, and in the absence of all question as to the divinity of the accused, comparing the requirements of the law with the actualities of the case, we can come to no other conclusion than that the

proceedings against Jesus before Pilate on the charge preferred against him, on the last trial, in the Roman court, were legally conducted.

Let it be understood in this analysis that it must be held and borne in mind that in reviewing this case or any other, errors cannot be presumed that do not affirmatively appear upon the record. It is rather to be presumed that what should have been done, was done. Hence we find, that Pilate acted in strict obedience to the requirements of Roman law in trying Jesus. The legal presumption is that a bench of judges helped Pilate to conduct this trial, that they were in and about the Praetorium and actually took part in the proceedings. This inference is strengthened by the fact that Pilate called Jesus into the judgment hall of the Palace in order to examine him. (Geikie, "The Life and Words of Christ," vol. xii, p. 532.) The legal presumption is that the witnesses who were called against Jesus, gave competent testimony, and that the weight of the evidence submitted together with the admissions of the accused, was sufficient to warrant the court in finding him guilty and imposing the penalty provided through due process of law.

I must agree with many noted historians in holding that it was Pilate's duty to maintain peace and order in Judea and to maintain Roman power; in doing so, he was clearly within his prerogative if ample evidence was submitted in regular form, in carrying out the mandate of the law. In this contention I take no cognizance of the divinity of the prisoner before him, or of his Messiahlike qualities. In the discussion of these questions, I have treated him as a man alone,—a teacher and Jew. Undoubtedly many will disagree in the position assumed. Let homage be paid to the character and spirituality of Jesus by those who will, those of other beliefs will not question the honesty of their intentions and acts."